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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
MUR 6648) DISMISSAL AND CASE
Gene Jeffress for Congress) CLOSURE UNDER THE
and Allen Searcy as treasurer) ENFORCEMENT PRIORITY
SYSTEM

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GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of the General Counsel has scored MUR 6648 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.

For the reasons set forth below, the Office of the General Counsel recommends that the Commission exercise its prosecutorial discretion and dismiss the allegation that Respondents Gene Jeffress for Congress and Allen Searcy in his official capacity as treasurer (collectively the "Committee")¹ violated 2 U.S.C. § 441d(a)(1) and 11 C.F.R. § 110.11(a)(1).

The Complaint alleges that the Committee violated the Act by failing to provide proper disclaimers on the Committee's campaign materials, which included "campaign push

¹ The EPS rating information is as follows:
Response Filed: October 18, 2012.

Complaint Filed: September 18, 2012.

card[s],” yard signs, and “campaign fan[s].” Compl. at 1. The Complaint includes photographs of those campaign materials that contain language such as, “Gene Jeffress Congress/Democrat/District 4,” as well as Jeffress’ biographical information, two telephone numbers, a street address, and the Committee’s website address, “www.jeffressforcongress.com.” *Id.*

Respondents acknowledge that they failed to include disclaimers in their campaign materials. *See Resp.* at 1. They state, however, that prior to the Complaint, the Committee had distributed only a small amount of the campaign materials in question and upon receipt of the Complaint, the Committee suspended the distribution of the campaign materials within 24 hours. *Id.* Further, the Committee corrected all remaining materials by affixing decals containing the proper disclaimer language. *Id.* Attached to the Response are photographs of the Committee’s campaign materials with a disclaimer stating “Paid for by Jeffress for Congress.” *Id.*, Attach. 1-4.

Under the Act, a political committee that makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising must include a disclaimer in such communication. 2 U.S.C. § 441d(a); *see also* 11 C.F.R. § 110.11(a)(1). If the communication is paid for by a candidate, an authorized political committee of a candidate, or its agents, the disclaimer must clearly state that the communication has been paid for by such authorized political committee. 2 U.S.C. § 441d(a)(1); *see also* 11 C.F.R. § 110.11(b)(1).

Here, the available information indicates that the Committee’s campaign materials did not contain disclaimers prior to the filing of the Complaint, and Respondents acknowledge that they were in violation of the Act. We do not recommend, however, that

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the Commission pursue this matter further since it is unlikely that the general public would have been misled as to who paid for the production of the campaign materials. In addition, the distribution of the campaign materials appears to have been minimal, and the Committee took prompt remedial action.

Accordingly, in view of the available Commission resources, the Office of the General Counsel recommends that the Commission exercise its prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), to dismiss this matter. Additionally, the Office of General Counsel recommends that the Commission approve the attached Factual and Legal Analysis and the appropriate letters, and close the file.

RECOMMENDATIONS

1. Dismiss the allegation that Gene Jeffress for Congress and Allen Searcy in his official capacity as treasurer violated 2 U.S.C. § 441d(a)(1) and 11 C.F.R. § 110.11(a)(1);
2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
3. Close the file.

3/20/14
Date

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